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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,154	10/20/2005	Zhijun Cai	CE11295N	1334
22917	7590	08/12/2008		
MOTOROLA, INC. 1303 EAST ALGONQUIN ROAD IL01/3RD SCHAUMBURG, IL 60196			EXAMINER PHUONG, DAI	
			ART UNIT 2617	PAPER NUMBER
			NOTIFICATION DATE 08/12/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/554,154	<b>Applicant(s)</b> CAI, ZHIJUN	
	<b>Examiner</b> DAI A. PHUONG	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-15, 18-23 and 25-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 9, 18-22, 25 and 26 is/are rejected.
- 7) ☒ Claim(s) 6, 10-15, 23 and 27-32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This Office Action is response to the Preliminary Amendment filed on 10/20/2005 in which claims 7, 16-17, 24 and 33-34 have been canceled. Claims 1-6, 8-15, 18-23 and 25-32 are currently pending.

#### Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6, 8-15, 18-23 and 25-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6987749. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Regarding claim 1 of the present application, claim 1 of U.S. Patent No. 6987749 disclose a method for controlling access to a Multimedia Broadcast Multicast Service (MBMS) service comprising:

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determining a quantity of mobile stations subscribed to the MBMS service and maintaining an active connection ([0014] to [0042]);

determining an access probability factor ([0014] to [0042]);

broadcasting a control message comprising the access probability factor; receiving, from each of one or more idle mode mobile stations, a response to the control message; comparing the number of received responses to a threshold to produce a comparison ([0014] to [0042]); and

determining whether to establish a point-to-multipoint communication or a point-to-point communication based on the comparison ([0014] to [0042]).

Regarding claims 2-6, 8-15, 18-23 and 25-32, claim 1 of U.S. Patent No. 6987749 discloses all limitations above and also discloses claims features of claims 2-6, 8-15, 18-23 and 25-32.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 8-9, 18-22 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kall et al. (Pub. No.: 20070086441) in view of Pirskanen et al. (Pub. No.: 20040157640).

Regarding claim 1, Kall et al. disclose a method for controlling access to a Multimedia Broadcast Multicast Service (MBMS) service comprising:

determining a quantity of mobile stations subscribed to the MBMS service and maintaining an active connection ([0019] and [0032]. Kall et al. disclose Using RCID a radio network controller (or base station controller) calculates the number of mobile stations that have requested (registered with) the specific broadcast or multicast service in one or several cells of the cells defined in the radio access network of which the radio network controller controls);

comparing the number of received responses to a threshold to produce a comparison; and determining whether to establish a point-to-multipoint communication or a point-to-point communication based on the comparison ([0019] and [0034]. Kall et al. disclose that when the number of mobile stations within a particular cell is reduced beneath a selected level, the RANcast, if appropriate, is terminated and unicasts of the data are instead implemented to effectuate the broadcast of the multicast data to the appropriate mobile stations).

However, Kall et al. do not disclose determining an access probability factor; broadcasting a control message comprising the access probability factor; receiving, from each of one or more idle mode mobile stations, a response to the control message.

In the same field of endeavor, Pirskanen et al. disclose determining an access probability factor; broadcasting a control message comprising the access probability factor; receiving, from each of one or more idle mode mobile stations, a response to the control message ([0018] and [0049]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the **mobile radio** of Kall et al. by specifically including determining an access probability factor; broadcasting a control message

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comprising the access probability factor; receiving, from each of one or more idle mode mobile stations, a response to the control message, as taught by Pirskanen et al., the motivation being in order to determine the number of user equipment associated with the MBMS.

Regarding claim 2, the combination of Kall et al. and Pirskanen et al. disclose all limitations in claim 1. Further, Kall et al. disclose the method wherein the threshold comprises a threshold adjusted by the determined quantity of mobile stations subscribed to the Multimedia Broadcast Multicast Service (MBMS) service and maintaining an active connection ([0019] and [0034]).

Regarding claim 3, the combination of Kall et al. and Pirskanen et al. disclose all limitations in claim 2. Further, Kall et al. disclose the method wherein determining whether to establish a point-to-multipoint communication or a point-to-point communication comprises determining to establish a point-to-multipoint communication when the number of responses exceeds the threshold, and to establish a point-to-point communication when the number of received responses does not exceed the threshold ([0019] and [0034]).

Regarding claim 4, the combination of Kall et al. and Pirskanen et al. disclose all limitations in claim 3. Further, Pirskanen et al. disclose the method wherein determining whether to establish a point-to-multipoint (PTM) communication or a point-to-point (PTP) communication comprises, when the number of received responses does not exceed the threshold, determining whether to establish a PTM communication or a PTP communication based on the access probability factor ([0018] and [0049]).

Regarding claim 5, the combination of Kall et al. and Pirskanen et al. disclose all limitations in claim 4. Further, Pirskanen et al. disclose the method wherein determining whether to establish a point-to-multipoint (PTM) communication or a point-to-point (PTP) communication comprises: when the number of received responses does not exceed the threshold, determining whether the access probability factor is equal to one (1); when the access probability factor is not equal to one (1), determining whether to establish a PTM communication or a PTP communication based on the number of idle mode mobile stations responding to the control message ([0018] and [0049]).

Regarding claim 8, the combination of Kall et al. and Pirskanen et al. disclose all limitations in claim 3. Further, Pirskanen et al. disclose the method wherein determining to establish a point-to-point (PTP) communication comprises: determining whether the access probability factor is equal to one (1); when the number of received responses does not exceed the threshold and when the access probability factor is equal to one (a), establishing a PTP communication channel with each MS responding to the control message ([0018] and [0049]).

Regarding claim 9, the combination of Kall et al. and Pirskanen et al. disclose all limitations in claim 3. Further, Pirskanen et al. disclose the method wherein determining to establish a point-to-point (PTP) communication comprises: determining whether the access probability factor is equal to one (1); when the access probability factor is not equal to one (1), determining whether the number of idle mode mobile stations responding to the control message is equal to zero (0); and when the number of received responses does not exceed the threshold and when the number of idle mode mobile

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stations responding to the control message is equal to zero (0), establishing a PTP communication channel with each MS responding to the control message ([0018] and [0049]).

***Allowable Subject Matter***

4. Claims 6, 10-15, 23 and 27-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11-13 are dependent on claim 10.

Claim 15 is dependent on claim 14.

Claims 28-30 are dependent on claim 27.

Claims 32 is dependent on claim 31.

Regarding claims 6 and 23, the prior art record does not disclose nor fairly suggest the method further comprising: upon determining to establish a point-to-multipoint (PTM) communication: adjusting the access probability factor based on the number of responses from idle mode mobile stations and the threshold; establishing a PTM communication channel.

Regarding claims 10 and 27, the prior art record does not disclose nor fairly suggest the wherein determining whether to establish a point-to-multipoint (PTM) communication or a point-to-point (PTP) communication when the number of received responses does not exceed the threshold comprises: determining whether the access probability factor is equal to one (1); when the access probability factor is not equal to one (1), determining whether the number of idle mode mobile stations responding to the



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control message is equal to zero (0); and when the number of idle mode mobile stations responding to the control message is not equal to zero (0): adjusting the access probability factor based on the number of idle mode mobile stations responding to the control message and the threshold to produce an adjusted access probability factor; determining whether to establish a PTM communication or a PTP communication based on the adjusted access probability factor.

Regarding claims 14 and 31, the prior art record does not disclose nor fairly suggest the wherein determining whether to establish a point-to-multipoint communication or a point-to-point communication based on the number of responses comprises: adjusting the access probability factor based on the number of received responses to the control message to produce an adjusted access probability factor; determining whether the adjusted access probability factor is greater than or equal to one (1); when the adjusted access probability factor is greater than or equal to one (1), establishing a point-to-point (PTP) communication channel with each MS responding to the control message.

### **Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dai A Phuong whose telephone number is 571-272-7896. The examiner can normally be reached on Monday to Friday, 9:00 A.M. to 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nguyen M Duc can be reached on 571-272-7503. The fax phone number for the organization where this application or proceeding is assigned is 571-273-7503.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Dai A Phuong/

Examiner, Art Unit 2617

Date: 08/02/2008

/Duc Nguyen/

Supervisory Patent Examiner, Art Unit 2617